

**DEQ – Air Quality Division**  
**SUMMARY OF NEGOTIATED RULEMAKING**  
**DAIRY PERMITTING**  
**DOCKET No. 58-0101-0502**  
**August 2, 2005**

**PARTICIPANTS**

Bauer, Martin – DEQ  
Bilderback, John - ISDA  
Brown, Cashia – Elmore County  
Eddie, Bill – Advocates for the West  
Haynes, Claudia - Canyon County  
Kelly, Kate – Idaho Senate  
Louks, Bruce – DEQ  
McClure, Ken – Givens Pursley  
McLean, Lauren – Idaho Conservation League  
Naerebout, Bob – Idaho Dairyman's Assoc.  
Olmstead, Brent – Milk Producers of Idaho  
Patten, Marv – ISDA  
Simon, Mike – DEQ  
Heitman, Phyllis – DEQ (Admin Support)

**DISCUSSION**

Martin Bauer began by discussing the draft rule dated July 13, 2005. This draft was distributed for committee review approximately two weeks ago. Marv Patten pointed out that Sections 763.01 and 763.02 both address the Registration Process for "existing" dairies. Mr. Bauer said DEQ will revise the rule so Section 763.01 addresses "new dairies" and Section 763.03 addresses "existing dairies."

He recalled that at the last meeting there was a lengthy discussion on Section 763.03. He suggested tabling further discussion on this section until Ken McClure is present since he is interested in the content of this section.

Relative to Section 763.03.b and a question from Bill Eddie, Mr. Bauer said he is undecided about the requirement to provide "information sufficient to establish that the dairy is of the size and type subject to these rules." ISDA currently collects similar information, so requiring this in the DEQ rule might be duplication. Mr. Bauer stated Lauren McLean has spoken in favor of retaining this requirement while Ken McClure thinks the subsection should be deleted.

In lieu of the dairy demonstrating the "size and type", Claudia Hayes suggested it be reworded to read "approved amount" or "permitted amount." Since most facilities need a conditional use permit, which states how many animals are allowed, can that number be used in place of the actual number on the ground? Mr. Patten added this occurs often with beef cattle operations where the facility will be approved for a capacity but

due to various circumstances the operation has less. The facility may be permitted by the county for a higher number but it may take several years to reach its maximum capacity. Mr. Bauer said he would prefer to stay with the actual values because it leads back to actual ammonia emissions.

Mr. Eddie asked about the status of discussions regarding ISDA's involvement in inspections and enforcement. He asked if ISDA will be officially delegated portions of this program beyond inspection authority. Mr. Bauer said DEQ and ISDA have held meetings but no decisions have been reached. There is still research to be done. Kate Kelly asked when this topic will be brought before this rulemaking group. Mr. Bauer responded there is no clear cut idea to present at this time. Ms. Kelly stated this rulemaking group should be part of the discussions. Mr. Bauer stated DEQ does not usually negotiate how DEQ performs compliance. This is a unique situation. Potentially, DEQ and ISDA could generate an MOU or similar document, which would go to public comment and be reviewed by this committee. He reiterated that DEQ and ISDA have not come to a decision on this yet and DEQ is not ready to bring a proposal to the group. The document would not be part of the dairy rule but would be a stand-alone document

Mr. Eddie said the environmental members have supported the idea of having ISDA conduct the dairy inspections since they are already onsite, but, he is not certain where they would stand on functions beyond the inspection. The dairy industry would like coverage under the SIP; however, this rule will not be part of the SIP. In addition, delegating enforcement authorities to a non-SIP agency, would not give much coverage to industry. Both sides should have some concern about this idea. Mr. Patten stated that Ken McClure would probably want to be part of this discussion.

Ms. Kelly stated there needs to be discussion with a broader audience regarding the enforcement authorities prior to any decisions being made.

Ms. McLean reminded members that at the last meeting there was discussion about obtaining an Attorneys General Opinion. She asked if that was done. Mr. Bauer said Lisa Kronberg obtained similar information regarding a cyanide issue with Department of Lands. The question was could Land delegate to DEQ certain authorities and the answer was not unless the statute specifically allows it to do that. Mr. Bauer said Ms. Kronberg had said all along that the statute allows DEQ to delegate inspection authority but not enforcement authority. She shared this information with Mr. McClure and Mr. Eddie. There has been no official opinion on this specific issue. Mr. Bauer assumes everyone is still looking at this and will decide if an opinion is needed. Mr. Patten said one question he posed to the DEQ/ISDA discussion group was, if the law does not strictly prohibit entering into an enforcement agreement, is it possible that an agreement could be made? He does not see anything that would make it illegal. But if the thought process is that it needs to be specifically legislated to grant that authority, he could understand that.

Ms. Kelly said there is some kind of analogy between the dairy and beef cattle industries. There are issues specific to the air quality program and how this does or does not affect the SIP and the authorization of DEQ's program. She restated further conversation definitely needs to be held.

Ms. Kelly also asked about the registration information. She assumes ongoing reporting and recordkeeping will be required. Mr. Bauer said the dairy is required by Section 763.03.c to develop a best management plan. That plan would be used during the inspection to ensure the dairy is operating as planned. Mr. Patten posed a question relative to degrees of compliance with the BMPs planned. If an operator is using a BMP half of the time, does he get some amount of points as opposed to an operator who is using the BMP full-time and getting full points. He stated he is certain there will be many instances of operators being in partial compliance.

Mike Simon described similar situations with rock crushers where compliance decisions can sometimes be somewhat subjective. A rock crusher may be applying sprays to half of its fugitive sources and not the other half. Compliance is determined by the amount of dust and if there are nearby neighbors. The other side of the spectrum is a situation where you have control equipment, such as a cover. This would be a specific control where it is covered or it is not; it either works or it does not. Mr. Patten commented that even if there is a tear in a cover, it still is accomplishing some percentage of its intended goal.

Mr. Eddie asked if DEQ would send a letter of non-compliance with corrective action plan when it finds partial violations. Mr. Bauer said initially there would probably be no enforcement action but instead a plan of correction.

Mr. Bauer commented it will not be possible to write every issue into the rule to make decision-making black and white. There will be a lot of subjectivity and judgment calls. The inspector will point out the problem and ask the operator how he plans to correct the issue. If the operator does not already have a corrective plan, the inspector will notify him the problem must be corrected. The facility will be considered non-compliant until the issue is solved.

Bob Naerebout asked how equipment downtimes could be handled. Mr. Bauer said that in the air quality program, some units are required to be operable a certain percentage of the time. Ms. Kelly observed the draft rule has no recordkeeping requirement so the inspector has no way of establishing what percentage of time equipment has been in operation. Mr. Bauer said the inspector would have to determine that. Ms. Kelly added she cannot imagine this rule without a recordkeeping or reporting component.

In the past the group has discussed this rule effecting 44 dairies. Ms. McLean reminded members that at a recent meeting the industry said everybody will eventually apply. Mr. Bauer said the rule allows for a facility to apply for this program even though the dairy is not required to do so by the rule. If a dairy wants the protection, it is free to apply. However, once it applies, they must meet all the requirements and stay in compliance.

Mr. Patten asked if there is an "out" clause for these facilities. Mr. Bauer said the "out" clause is they should not voluntarily apply if they do not want to comply. If they are in good standing and decide they do not want to be in the program, they can ask for their application to be withdrawn.

There was some discussion about inserting an enforcement penalty matrix in the rule. Mr. Bauer said he would like to talk with Ms. Kronberg before discussing further. It may depend on the outcome of compliance/enforcement discussions with ISDA. If DEQ has enforcement authority, it will probably be omitted. If ISDA has the authority, it may be placed in the rule.

Ms. Kelly asked about how complaints would be handled. Mr. Bauer responded that odor complaints will continue to be handled by ISDA. One thing to remember about this rule is that it addresses ammonia emissions and not odor issues. ISDA has odor rules. Ms. Kelly said she thinks it would be a lot less subjective process if the operator had records onsite that stated the BMPs they agreed to and report what had been done to comply. Mr. Bauer said that the dairymen's fear is that if the rule requires them to check a box on a form that a BMP was done and the inspector does not see the box checked but sees the BMP is being done, the inspector would have to call them non-compliant. The operators are concerned their workers will not check the boxes.

Mr. Bauer reminded the group that it still must review each BMP and determine what criteria will determine compliance. Ron Sheffield is incorporating this into his BMP table.

Mr. Bauer revisited the earlier discussion on credit for partial BMPs. He suggested that, depending on the BMP, DEQ may decide the dairy will not receive any credit if it is not utilizing a particular BMP even though it is probably getting benefit; it is not worth the hassle to argue whether a dairy should get one or two or six points. There may be some BMPs that are easier to argue and that may merit partial credit.

Mr. Louks said that inspectors need to have a standardized perspective on how they implement the BMP ratings. Mr. Patten said his agency tries to obtain this uniformity among inspectors but judgment plays a role. In answer to an inquiry, he said ISDA has nine staff who currently inspect dairies. Training and outreach will be a big component for the dairies as well as for the inspectors.

### **SCHEDULE AND AGENDA FOR FUTURE MEETINGS**

The next negotiated rulemaking meetings were scheduled as follows:

August 31, 2005 - 9:00 a.m. – 12:00 p.m., DEQ Office Building, Boise  
(August 22 is an alternative date)

September 13, 2005 - 9:00 a.m. – 12:00 p.m., DEQ Office Building, Boise

The agenda for the August 31 meeting will include the following topics. We will make certain Ron Sheffield is available on August 31 to discuss BMPs.

- BMPs Review – Compliance (Monitoring – Reporting – Recordkeeping)
- BMP – Distance

*(Editor's Note: Subsequently, the August 31 meeting was cancelled; the September 13 meeting will be held as scheduled)*

## **ATTACHMENT 1**

### **TEXT OF RULE – 7-13-05**

#### **760. RULES FOR THE CONTROL OF AMMONIA FROM DAIRY FARMS.**

The purpose of Sections 760 through 764 is to set forth the requirements for the control of ammonia through best management practices (BMPs) for certain size dairy farms licensed by the Idaho State Department of Agriculture to sell raw milk for human consumption. Compliance with these sections does not relieve the owner or operator of a dairy farm from the responsibility of complying with all other federal, state and local applicable laws, regulations, and requirements, including, but not limited to, IDAPA 58.01.01.161, 650 and 651. Registration forms and guidance documents relating to these rules are located at [www.idaho.gov](http://www.idaho.gov).

#### **761. GENERAL APPLICABILITY.**

The requirements of Sections 760 through 764 apply to the following size dairy farms:

**SUMMARY: Animal Unit (AU) or mature cow threshold to produce 100 ton NH<sub>3</sub>/year**

Animal Unit (AU) Basis	Drylot	Free Stall/Scrape	Free Stall/Flush
	AU (100 t NH <sub>3</sub> ) threshold		
No land app	7089	3893	2293
27% volatilization <sup>1</sup>	6842	3827	
80% volatilization <sup>2</sup>	6397	3700	
Cow basis (1400 lbs)	Drylot	Free Stall/Scrape	Free Stall/Flush
	Total cows (100 t NH3) threshold		
No land app	5063	2781	1638
27% volatilization <sup>1</sup>	4887	2733	
80% volatilization <sup>2</sup>	4569	2643	

<sup>1</sup> Assumes: Expected level of N->NH<sub>3</sub> volatilization for: **drop-hose or other-ground level liquid manure application**

<sup>2</sup> Assumes: Expected level of N->NH<sub>3</sub> volatilization for: **center pivot or other conventional sprinkler irrigation liquid manure application**

#### **762. PERMIT BY RULE.**

Owners and operators of dairy farms shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 760 through 764. Owners and operators of dairy farms subject to these sections shall not operate without obtaining the applicable permit by rule within the timeframe specified. Nothing in Sections 760 through 764 shall preclude any owner or operator of a dairy farm from requesting and obtaining an air quality permit pursuant to Section 200, nor shall Sections 760 through 764 preclude an owner or operator of a dairy farm below the threshold size in Section 761 from complying with Sections 760 through 764 and thereby obtaining an enforceable permit by rule.

#### **763. REGISTRATION FOR PERMIT BY RULE.**

**01. Registration Process.** Any owner or operator of a new dairy farm subject to these sections, or an existing dairy farm that becomes subject to these sections due to change in size or type of operation, shall register within prior to fifteen (15) days of commencing operation.

**02.** Any owner or operator of an existing dairy farm subject to these sections shall register within fifteen (15) days of the effective date of Sections 760 through 764.

**03. Registration Information.** The following information shall be provided by the registrant to the Department of Environmental Quality and the Department of Agriculture:

- a. Name, address, location of dairy farm, and telephone number.
- b. Information sufficient to establish that the dairy farm is of the size and type subject to these rules per Section 761.
- c. Information describing what BMPs, as described in Section 764, are employed to total \_\_\_\_ points.

~~d. Registration forms for this submittal are available at www.\_\_\_\_\_.~~

~~04. Upon~~ Within thirty (30) days of receipt of the registration information, the state of Idaho shall conduct a qualifying inspection to ensure the requisite point total of BMPs are employed.

#### **764. DAIRY FARM BEST MANAGEMENT PRACTICES.**

**01. BMP.** Each dairy farm subject to these ~~rules sections~~, or otherwise obtains a permit by rule under these sections, shall employ BMPs for the control of ammonia to total \_\_\_\_ points. The following table lists available BMPs and the associated point value. As new information becomes available or upon request, the Director may determine a practice not listed in the table constitutes a BMP and assign a point value. ~~Director approved BMPs not listed below shall be available for review in the Manual of Best Management Practices for the Control of Ammonia at Dairy Farms at www.\_\_\_\_\_.~~